IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 460 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? : NO No

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? No :

GUJARAT STATE CIVIL SUPPLIES CORPORATION EMPLOYEES UNION

Versus

GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD.

Appearance:

1. Special Civil Application No. 460 of 1992

MR HB SHAH for Petitioners

MR KM PATEL for Respondent No. 1

MR PREMAL JOSHI,AGP, for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 29/11/2002

ORAL JUDGEMENT

By filing instant petition under Article 226 of

the Constitution, the petitioners have prayed to quash and set aside the relevant Rule of the Recruitment and Promotion Rules, 1985 by which the qualification of Second Class Degree in M.Com., from a recognized University is prescribed for the post of Deputy Manager (Finance/Accounts). The petitioners have further prayed to direct the Gujarat State Civil Supplies Corporation Limited to amend the above-mentioned recruitment Rule in order to enable the petitioners to claim promotion to the higher post of Deputy Manager (Finance/Accounts), on the basis of experience and good record of service in the respondent No.1-Corporation. It is also prayed to direct the respondent No.1-Corporation to forebear from recruiting anybody on the basis of the advertisement produced at Annexure-C to the petition.

2. The respondent No.1 is a Company registered under the provisions of the Indian Companies Act, 1956. Initially, when the respondent No.1-Corporation was incorporated, the officers of the State Government, who were deputed to the respondent No.1-Corporation, were managing affairs of the Corporation. Those officers, who had opted for being absorbed permanently, were so absorbed in the service of respondent No.1-Corporation. The respondent No.1-Corporation started recruiting members of its staff in the years 1982 and 1983 by issuing public advertisements and inviting applications from the qualified candidates. In response to the said advertisements, the petitioner Nos. 2 to 7 had made applications and were selected as well as appointed on the posts of Assistant Manager. Prior to 1985, there were no rules for recruitment of the members of staff on the establishment of respondent No.1-Corporation. For the first time, in the year 1985, the Corporation framed Rules known as "The Recruitment and Promotion Rules, 1985" ("the Rules" for short). The Rules were promulgated on June 14, 1985. The Rules, inter alia, provide qualifications for various posts on the establishment of respondent No.1-Corporation. As per the Rules, the immediate higher post to that of the Assistant Manager is that of the Deputy Manager. There are two branches in the cadre of Deputy Manager i.e. (i) Deputy Manager (Finance/Accounts), and (ii) Deputy Manager (Administration) on the establishment of respondent No.1-Corporation. So far as the post of Deputy Manager (Admn.) is concerned, the only qualification prescribed is that the candidate must have experience of four years in the post of Assistant Manager; whereas for the post of Deputy Manager (Finance/Accounts), the qualification prescribed is that the candidate should have four years' experience as an Assistant Manager, and also hold the

academic qualification prescribed for the direct recruitment i.e. he must have graduation with first class and post-graduation of second class in the faculty of Commerce from a recognized University. What is claimed by the petitioners is that when they were recruited at the initial stage, they were not required to hold post-graduation degree in the faculty of Commerce, nor were there any Rules in force regarding recruitment and/or promotion to various posts on the establishment of respondent No.1-Corporation and, therefore, the requirement that a candidate must have a graduation with first class and post-graduation with second class in the faculty of Commerce from a recognized University for claiming promotion to the post of Deputy Manager (Finance/Accounts), is arbitrary and illegal. It is asserted by the petitioners that in prescribing two different qualifications for the posts of Deputy Manager (Finance/Accounts) and the Deputy Manager (Admn.), respondent No.1-Corporation has violated the provisions of Articles 14 & 16 of the Constitution and, therefore, the same should be held to be invalid. Under the circumstances, the petitioners have filed present petition and claimed reliefs to which reference is made earlier.

3. On service of notice, Mr.Arvind D.Gaudana, Manager (Personnel), Gujarat State Civil Supplies Corporation Limited, has filed affidavit-in-reply controverting the averments made in the petition. What is highlighted in the reply is that different prescription of qualifications for the posts of Deputy Manager (Admn.) and Deputy Manager (Finance/Accounts) is based having regard to the duties to be performed by them and, therefore, the same cannot be regarded as violative of provisions of Articles 14 & 16 of the Constitution. It is also stated in the reply affidavit that the petitioners are eligible for promotion to the post of Deputy Manager (Admn.), and it is not correct to contend that the petitioners are not entitled to the promotion at all to any post. In paragraph 12 of the reply, it is maintained that there is reasonable nexus between the qualifications prescribed for promotion as Deputy Manager (Accounts) and the objects sought to be achieved viz. efficient discharge of duties by the persons possessing the required educational qualification having background of accounts and commerce, and therefore, the petitioners are not entitled to the reliefs claimed in the petition.

4. I have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. It is true that different

qualifications have been prescribed for the posts of Deputy Manager (Finance/Accounts) and Deputy Manager (Admn.). However, there is no manner of doubt that there is reasonable nexus between the qualifications prescribed for promotion and the duties to be performed by the Deputy Manager (Accounts) as well as by the Deputy Manager (Admn.). It needs to be mentioned that one who possesses qualifications of graduation with first class and post-graduation with second class in the faculty of Commerce from a recognized University, would be able to perform his duties as Deputy Manager (Accounts) efficiently and effectively. The educational qualifications required for the promotional post need not be the same as required for direct recruitment for feeder posts, particularly when a separate avenue of promotion is available to a different cadre. In the affidavit-in-reply it is specifically stated that the petitioners are eligible for promotion to the post of Deputy Manager (Admn.) and this makes it abundantly clear that chances of promotion of the petitioners are not marred at all. It may be stated that the post of Deputy Manager (Accounts) and the post of Deputy Manager (Admn.) belong to different classes and, therefore, it was not necessary for the respondent No.1-Corporation to treat the posts on equal footing and prescribe the same qualifications for the same. The contention that in order to see that promotions are given to the departmental candidate to the post of Deputy Manager (Admn.), departmental examinations should have been prescribed and different qualifications in the Rules should not have been provided for, cannot be accepted. It is for the respondent No.1-Corporation to decide as to how promotion to the post of Deputy Manager (Admn.) and Deputy Manager (Accounts) should be regulated, and the Court while hearing a petition under Article 226 of the Constitution cannot direct the respondent no.1-Corporation to prescribe departmental examinations to enable the employees serving in the respondent No.1-Corporation to claim promotion to the post of Deputy Manager (Accounts). The only thing which the Court is required to see is whether the action of prescribing two different qualifications for two different posts is illegal in any manner or not, and as indicated above, the Court does not find that the prescription of different qualifications for two different posts is either arbitrary or violative of any of the principles enshrined in Articles 14 & 16 of the Constitution. Under the circumstances, the Court does not find any substance in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails,

and is dismissed. Rule is discharged. There shall be no order as to costs.

(J.M.Panchal,J.)

(patel)